

SUPREME COURT OF ARKANSAS

No. CR06-849

BRIAN A. CROSSNO,
APPELLANT,

VS.

STATE OF ARKANSAS,
APPELLEE,

Opinion Delivered March 15, 2007

UPON REMAND OF FINDINGS OF
FACT ON ATTORNEY ERROR.

NO ATTORNEY ERROR.

PER CURIAM

In *Crossno v. State*, ___ Ark. ___, ___ S.W.3d ___ (Dec. 14, 2006) (“*Crossno I*”), we treated a motion for rule on clerk, filed by appellant, Brian A. Crossno, as a motion for belated appeal, granted appellant’s request to pursue a belated appeal under Ark. R. App. P.–Crim. 2(e), and denied a motion to be relieved as counsel filed by Mr. James Dunham of the Arkansas Public Defender Commission. In *Crossno v. State*, ___ Ark. ___, ___ S.W.3d ___ (Jan. 25, 2007) (“*Crossno II*”), we granted a petition for rehearing filed by appellant to reconsider our *per curiam* opinion and remanded the matter to the circuit court for findings of fact on the issues surrounding Dunham’s assignment to the case and petitioner’s request to file an appeal. The circuit court’s findings and a transcript of the hearing are now before us.

On February 22, 2007, the circuit court entered its order and made the following

findings of fact:

1. Attorney James Dunham was never individually appointed to represent Brian Crossno.

2. Brian Crossno never advised attorney James Dunham to appeal the Order Denying Motion for Reconsideration (filed April 26, 2006), or any order of this court.

3. Attorney James Dunham never had notice of any request by any person to appeal the Order Denying Motion for Reconsideration because Brian Crossno never made any such request.

4. Attorney James Dunham's first notice of the existence of this case occurred on the afternoon of Friday, May 19, 2006, and he immediately faxed the clerk that day the Motion to Set Aside Order and Motion to Extend time to file the record on appeal which the clerk received May 19, 2006, and file-marked May 22, 2006 and May 23, 2006.

5. Based upon the previous hearings and findings of fact in this case and orders of the Arkansas Supreme Court, it is the law of the case in this matter that the Defendant Crossno's failure to file his pro se notice of appeal in a timely manner constituted a waiver of his right to appeal from the same. Since the defendant's motion for reconsideration relates back to the original order not timely appealed, then the said motion is moot.

Considering the findings of the circuit court, we conclude that there was no attorney error on the part of Mr. Dunham. Accordingly, we set aside our December 14, 2006 *per curiam* opinion finding attorney error and referring Dunham to the Committee on Professional Conduct. This opinion is referred to the Committee to correct their record. Further, we note that, in *Crossno I*, we granted appellant's motion for belated appeal, and we denied Dunham's motion requesting this court to relieve him as counsel. We abide by our previous holding in *Crossno I*.

Attorney error excused.